36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 485

REVOLUTIONARY SOLDIERS—WIDOWS AND CHILDREN OF.

[To accompany Joint Resolution No. 38.]

MAY 4, 1860.

Mr. POTTER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom were referred the petitions of divers children of revolutionary soldiers and their widows, praying to be allowed the arrears of pensions to which their parents are alleged to have died entitled, having had the subject under consideration, beg leave to report:

That during the 1st session of the 25th Congress a joint resolution was reported by the Committee on Revolutionary Pensions, "authorizing the pensions to which certain officers and soldiers of the revolution were entitled at the time of their death, to be paid to their widows, or their children, or their legal representatives."

By the terms of that resolution it was provided that the pensions to which officers and soldiers of the revolution might have been entitled at the time of their decease under the law, *whether the claim to the same had or had not been asserted* in the lifetime of the party, might be, on satisfactory evidence establishing the right of the deceased to said pension, paid to their widows, or their children, or their *legal representatives.* Your committee, after much consideration, have concluded that the right of prosecuting the claim of the deceased officer or soldier should be restricted to those cases in which the officer or soldier had aseerted his claim to a pension during his lifetime; and that this privilege ought not to be extended to the representatives of the dead, beyond his widow or his children.

The reason for this will be obvious. There were undoubtedly many officers and soldiers of the revolution, entitled to pensions under existing laws, whose situation in life was such that they did not require this aid, who, therefore, declined to accept the bounty of the government.

In such cases there would be no propriety in allowing their descendants to come in and apply for a pension for the services of their ancestors which the ancestors had refused. If, on the contrary, the

right or claim to a pension was asserted by the officer or soldier in his lifetime, and he did not succeed in fully establishing the claim, there is a manifest propriety in allowing the descendants to come in and perfect the proof, and receive the arrears due. But your committee are of the opinion that this right should not extend beyond the children of the deceased soldier. It would be opening the door too wide to allow remote representatives to prosecute the claims of ancestors to the bounty of the government, and to allow those to become beneficiaries who, having rendered no service, have no other foundation for their claim than the meritorious acts of their progenitors.

Accompanying the joint resolution reported by the committee of the 35th Congress, was an able report by Mr. Hickman, which your committee adopt as a part of the report in order to show the former practice of the department in reference to this subject.

"Ever since the passage of the act of May 15, 1828, 'for the relief of certain surviving officers and soldiers of the army of the revolution,' until some time during the past year, it has been the practice of the departments charged with the execution of said act, and the supplemental act of June 7, 1832, and the various acts granting pensions to widows of revolutionary soldiers, in case of the death of any person entitled to the benefit of either of said acts without having established his or her claim thereto, to permit the widow, children, or legal representatives of such officer or soldier, or the children or legal representatives of such widow, to prosecute the claim to final settlement, and to receive whatever pension was due to such beneficiary at the time of his or her death. In the case of an officer or soldier dying entitled to a pension, the arrears due at his death have been uniformly allowed to his widow, if he left any, and if no widow, then to his children. In the case of a widow dying entitled to a pension, the amount due at her decease has been uniformly allowed to her children. To this extent the practice of the executive departments has been uniform and uninterrupted for a period of nearly thirty years. Whether any other classes of heirs or representatives except widows and children are entitled to such arrears, has been a subject of some conflict of opinion, and some contrariety of practice in the executive departments. For some years past, however, it has been the practice to allow such claims to widows and children, and to them, or for their benefit, only, until some time during the last year, when the question as to their rights was submitted to the present Attorney General by the Secretary of the Interior. On the 19th of September last the Attorney General gave an opinion, to the effect that on the death of any person entitled to a pension under either of the acts above referred to before the allowance of the claim by the executive department, the right to the pension *lapses* to the government, and no arrears are recoverable, either by the widow or the children, or any other heirs or representatives. This opinion of the Attorney General has been adopted by the Secretary of the Interior as the rule of his action in such cases, and, consequently, the examination of all claims by widows and children for pensions due their husbands or parents have been suspended.

"This has caused a large number of claimants, who have thus been

denied the privilege of further prosecuting their claims before the Pension office, to apply to the present Congress for relief; and as their petitions have been referred to this committee, we have deemed it incumbent upon us to give the question of their rights, under the general laws, a careful consideration, and to report thereon.

"Your committee find that when the act of May 15, 1828, was passed, its execution was committed to the Secretary of the Treasury; that officer construed the act to vest in the beneficiary an absolute and perfect right to the pay or pension, from the third of March, 1826, which survived to his legal representatives, in case of his death before establishing his claim; and he executed the act accordingly. In so doing he conformed to a practice which had long prevailed in the execution of certain navy pension acts, similar in character, (so far as this question was concerned,) and which practice had been sanctioned by Mr. Attorney General Wirt, in an able opinion of June 9, 1825.

"On the 2d of March, 1829, Congress passed an act providing: 'That whenever any revolutionary pensioner shall die, the Secretary of War shall cause to be paid the arrears of pension due to the said pensioner at the time of his death, and all payments under this act shall be made to the widow of the deceased pensioner, or to her attorney, or if he left no widow, or she be dead, to the children of the pensioner, or to their guardian or his attorney; and if no child or children, then to the legal representatives of the deceased.'

"This act has always been construed to apply to and embrace the case of a person dying entitled to a pension, although the claim was never allowed in his lifetime; and it is by virtue of this act, (and a revisory act of June 19, 1840,) that claims of the character now under consideration have been allowed to widows in preference to children, and to children in exclusion of creditors.

"The act of June 19, 1840, on this subject, only in a slight degree modifies the provisions of the act of 1829, above referred to. It provides, that in case of the death of any male pensioner, leaving children, but no widow, or if a female pensioner, leaving children, the amount of pension due at his or her decease shall be paid to the executor or administrator, for the benefit of the children, or directly to the children themselves, or any one or each of them, without the intervention of an administrator, as they may prefer; but it does not provide, like the act of 1829, for paying the amount due, to the executor or administrator, in case neither widow nor children survived. Whatever the effect of this omission may be upon the rights of executors and administrators, where neither widow nor children survive, it is clear that the rights of widows and children, if any do survive, are the same under the act of 1840, as they were under the act of 1829.

"Said act of May 15, 1828, has been followed up by the supplemental act of June 7, 1832, embracing a more comprehensive class of revolutionary officers and soldiers, and by sundry acts granting pensions to the widows of such officers and soldiers, viz: the acts of July 4, 1836, July 7, 1838, July 29, 1848, and February 3, 1853. Each one of these successive acts, like the act of 1828, vests in the beneficiary an absolute and unconditional right to the pension it grants, from a certain specified day; and each, like said act of 1828, is entirely

silent as to the rights of heirs or representatives, to recover any pension which a beneficiary may have died entitled, but without establishing his or her claim thereto, during life. Nevertheless, all these acts have been uniformly construed to vest in the beneficiaries descendable rights, in case of death without establishing or even asserting a claim; and the acts of March 2, 1829, and June 19, 1840, have been uniformly construed to apply to cases of this kind, under each of the above-mentioned acts, and to regulate the course of descent. The question as to the rights of widows and children under the acts of 1828 and 1832, and of children under the various widow's acts, has been repeatedly reviewed by attorneys general and heads of departments, and always with one uniform result, (in favor of their claims,) until reviewed by the present Attorney General in September last. No longer ago than the year 1856, the whole subject was elaborately reviewed by Mr. Attorney General Cushing, who, although expressing some doubts as to the original correctness of the construction given to said acts, nevertheless arrived at the conclusion, that a 'continuous series of uniform decisions on this point, in numerous cases, for many years, under successive administrations of the subject matter,' had rendered this construction 'the established rule of the government,' which ought to be acquiesced in, without recurring to doubts whether it was strictly correct in its inception.

"Not only has this construction of the laws in question been adhered to by the executive departments for more than a quarter of a century, but during that time it has been acquiesced in, if not expressly sanctioned, by every Congress. Large appropriations have annually been made by Congress for the payment of revolutionary pensions, with a full knowledge that large portions of the amounts so appropriated were being applied to the settlement of claims never allowed in the lifetime of the parties primarily entitled; and numerous special acts have, from time to time, been passed for the payment of claims of the same character.

"The act of May 15, 1828, and the various revolutionary pension acts subsequently passed, are all precisely alike in language and form, so far as the same can effect the question of survivorship. In no one of these successive acts has Congress inserted any clause indicating an intention that the same construction should not be given to it in this respect, which had uniformly prevailed under the prior acts of the series. In passing each of these successive acts, therefore, Congress has, by the clearest implication, adopted the well known construction which had been given to prior acts in the same form, and on the same subject.

"Your committee, after mature deliberation, has arrived at the conclusion, that the long and uniform course of practice which has prevailed under these acts, sanctioned, as it has been, by repeated decisions of high executive officers charged with their execution, and acquiesced in by other departments of the government, ought, upon every principle of law, justice, and sound policy, to be considered as settling all doubts as to the original correctness of the construction upon which that practice has been based, and as establishing the rights

of parties under said acts, beyond the legitimate power of mere executive officers to disturb them.

"There can be no urgent necessity, at this day, for changing the practice which has so long prevailed. The settlement of claims of this character must necessarily be drawing rapidly to a close. A few years' continuance of the practice which has hitherto prevailed, would put an end to them forever. However large the amount which has hitherto been drawn from the treasury in the liquidation of these claims, the amount which will be required to settle such as are still outstanding cannot be large enough to justify a resort to extraordinary measures, and the exercise of very doubtful powers, to defeat them.

"Your committee, entertaining these views, are of the opinion that the relief sought by the numerous petitioners whose claims have been referred to them, ought to be granted by general, and not by special legislation; and therefore recommend the adoption of the accompanying joint resolution."